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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,059	02/19/2002	Harry Wotton III	2839.1001-003	5944
21005	7590	09/28/2004	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			DAWSON, GLENN K	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/079,059	WOTTON, HARRY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Glenn K Dawson	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7-11,14-17,19-25,27-32,34,35 and 37-40 is/are rejected.
- 7) ☒ Claim(s) 3,6,12,13,18,26,33,36,41 and 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                                 |                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07-18-2002</u> . | 6) <input type="checkbox"/> Other: ____                                                |

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### ***Claim Objections***

Claims 1-13 and 35-42 are objected to because of the following informalities: in claim 1 line 5, the phrase that the "suture being actuated to place the suture intension" is objected to because it is unclear if the applicant intends to positively recite the suture in a tensioned configuration, or is merely wanting to state that the suture can be placed in tension.

Claims 35-42 all ultimately depend from claim 32. The preamble states that these claims are drawn to a crimping tool. The independent claim drawn to the crimping tool is claim 34, not 32.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 23, there is no antecedent basis for "the gap".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 34,35,38 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith-3314135.

Smith discloses a crimping tool having arms and jaws with crimping members. The crimping members define gaps therebetween for receiving a crimp member. The handles comprise a double-action mechanism-see fig. 2.

Claims 34,35,37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Theiler-4229849.

Theiler discloses a crimping tool having a pair of arms with jaws and crimping members. The crimping members define gaps therebetween. The gaps are curved and are mirror images of each other. See fig. 1

Claims 1,7,8-10,14,15,19-21,28,30 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Preissman-5476465.

Preissman discloses a crimp tube 10 having opposite ends and a lumen therethrough. The inner wall of the tube defines an angled surface as shown in fig. 2. A suture is crimped into the lumen of the tube by a crimping pliers 54A.

Claims 1,2,4,5,7,11,14-17,19,20,34,35,37,38 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Songer, et al.-5741260.

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Songer discloses a crimp tube 36 crimped by a crimping tool having jaws, handles and crimping members with gaps therebetween when closed. A tensioner holds tension on a suture crimped into the lumen of the tube.

Claims 32, 35 and 39 are rejected under 35 U.S.C. 102(e) as being anticipated by Jeske, et al.-66845439.

Jeske discloses a crimping tool having handles, jaws and crimping members. The members have gaps therebetween when the members are closed. As shown in fig. 10, the area between teeth 40A and the 2 bumps following depression 44A is rectangular and would form a rectangular opening when combined with the mirror image section of the other crimping member shown in fig. 9.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 10,21,22,24,25,27,30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Songer, et al.-'260 in view of Preissman-'465.

Songer discloses the invention as claimed with the exception of the material of the crimp tube and the kit. Preissman discloses the use of a titanium crimp tube. It would have been obvious to have formed the crimp tube of Songer, out of titanium, as it is a biocompatible material used in surgical applications. To have provided the different surgical instruments of Songer in a kit and provided a plurality of crimp tubes would have been an obvious design choice as being an obvious duplication of known parts, and a kit allows for the practical use of the device in a surgical procedure where more than one tube need be applied.

Claims 2,4,5,9,22,24,25,27,29,35,37,38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Preissman-'465 in view of Songer, et al.-260.

Preissman discloses the invention as claimed with the exception of the type of crimping tool being used. Songer discloses the claimed crimping tool. It would have been obvious to have used the crimping tool of Songer to crimp the crimp tubes of Preissman, as the gap in the crimping members of the jaws of the tool allows for proper pressure and crimping while minimizing the possibility of inadvertent crushing or severing of the crimping tube.



***Allowable Subject Matter***

Claims 3,6,12,13,18,26,33,36,41 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K Dawson whose telephone number is 703-308-4304. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 703-308-2154. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Glenn K Dawson  
Primary Examiner  
Art Unit 3731

Gkd  
27 September 2004